IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2955 of 2000
WITH
SPECIAL CIVIL APPLICATION No 2956 of 2000
WITH
SPECIAL CIVIL APPLICATION No 2957 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRAKASHBHAI SURENDRABHAI VYAS (SCA No.2955/2000)
JAMES EDWARD REUBEN (SCA No. 2956/2000)
HIMESHBHAI HASMUKHBHAI VYAS (SCA No. 2957/2000)

Versus

STATE OF GUJARAT

Appearance:
MR PM THAKKAR, learned Counsel for Petitioners
MR DP JOSHI, learned Asst.Govt. Pleader for Respondent No. 1
MR AKSHAY MEHTA for Respondent No. 4

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 04/08/2000

COMMON ORAL JUDGEMENT

Three separate petitions are filed by each

petitioner, but as common question of law and facts arise in all these three matters, the same are disposed of by this common judgment.

2. Managing Director, Production Manager and Director of M/s. Deepak Petrochem Limited, Baroda, (hereinafter referred to as the Company) have filed Special Civil Application No. 2955/2000, 2956/2000 and 2957/2000 respectively.

3. Brief facts, taken from Special Civil Application No. 2955/2000, are required to be considered for disposal of these three petitions:-

3.1 The Company is engaged in the manufacture of Chemicals, nomenclatured by the Company as Industrial Oil. On analysis, the Chemicals have been declared as Industrial Solvent. On 27.10.1999, District Supply Officer, Panchmahals along with other officers made a surprise checking, during which some irregularities were noticed. Unaccounted material worth Rs.53,966/- was also seized. There was no licence issued in favour of the Company for manufacture, purchase or sale of Industrial Solvent, and without licence the petitioners were engaged in manufacture and sale of Solvent. On 6.12.1999, and even thereafter in writing application for licence was rejected. According to the record, three parties were supplied industrial chemicals. However, the letters addressed to them were returned undelivered. On visit of the place where the three parties were shown to be carrying on business, it was found that no such firm was in existence. It was verified through the office of the District Magistrate and other officers also. Thus, in the name of bogus parties, by issuing bills, huge quantity of solvent was disposed of.

3.2 One Gautambhai Surendrabhai Vyas brother of the petitioner of Special Civil Application No. 2955/2000 was engaged in the business of transport in the name of Shri Sai Transport Company. It was alleged in the order that under bogus bills, with the active assistance of the said Shri Sai Transport Company and its drivers, Conductors and other staff, industrial solvent was supplied to other parties. The said transporter, despite making inquiries, was not co-operating with the officers. Mainly on these grounds, District Magistrate, Panchmahals, Godhra made an order of detention dated 6.2.2000 in view of the powers conferred upon him under sub-section 2 of Section 3 of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 (hereinafter referred to as the

Act) vide Annexure 'A'.

4. On 29.3.2000, the order was executed. Soon thereafter, on 31.3.2000, a representation was forwarded to the detaining authority which was received by the detaining authority on 5.4.2000. From the record it appears that the same was forwarded on 13.4.2000 to the State Government.

5. On behalf of the petitioner, learned counsel Mr. Prakash Thakkar has raised various contentions. However, it is not necessary to consider all the contentions which are raised in the matter since the matters can be disposed of only on one ground, namely, delay in considering the representation made by the detenues.

6. It is contended by learned counsel appearing for the petitioners that the order for detaining the detenues came to be made by the District Magistrate under section 3 of the Act. Thus, the order passed by the District Magistrate was required to be reported forthwith to the State Government with the grounds on which the order was made and other particulars, which in his opinion had a bearing on the matter. Sub-section 3 of section 3 of the Act further provides that the order made by the District Magistrate or the Commissioner of Police shall not remain in force for more than 12 days after making the order unless in the meantime it has been approved by the State Government. In the instant cases, this Court is not required to consider the proviso to sub-section 3 of Section 3 of the Act.

7. In the instant cases, it is pointed out in the affidavit filed by the Under Secretary to the Government of Gujarat, Food & Civil Supplies Department, Gandhinagar that the representation dated 31.3.2000 was sent by the District Magistrate on 13.4.2000. The District Magistrate has filed an affidavit on 1st July 2000 wherein it is stated in paragraph 11 that the representation dated 31.3.2000 was received on 5.4.2000 through Advocate of the petitioners. It is further stated that 8.4.2000 and 9.4.2000 were holidays and reply to the representation was forwarded to the Advocate of the detenues on 13.4.2000. It appears that copy of certain documents were not in English and some time was taken to get the same translated into English. It is further stated that on 13.4.2000 the detaining authority also informed the State Government and the Central Government. It appears that the detaining authority has decided the representation. In the words of the detaining authority, it is stated as under:-

"I say and submit that looking to the aforesaid explanation there is no inordinate delay in considering the representation on the part of the detaining authority".

8. As indicated earlier, as per sub-section (3) of section 3 of the Act, the detaining authority's order shall not remain in force for more than twelve days after making thereof unless in the meantime it has been approved by the State Government. It is not the case of the respondents in the instant cases that the detention orders have not been approved by the State within the time limit mentioned in sub-section (3) of Section 3 of the Act. It is contended by the learned counsel for the petitioners before the Court that after the Government considered the representation, it was not open for the District Magistrate to take a decision in the matter. He submitted that section 27 of the General Clauses Act would not be applicable to period as mentioned in sub-section 3 of the Act after the order is approved. Mr. Thakkar has placed reliance on the judgment of the Apex Court in the case of NAWALSHANKAR ISHWARLAL DAVE vs. STATE OF GUJARAT reported in AIR 1994 SC 1496. That was a case under the provisions contained in the Gujarat Prevention of Anti-Social Activities Act. There is no express power to revoke the order of detention after the approval given by the State Government under sub-section 3 of section 3 of the PASA Act. The power to rescind the detention order, therefore, would be available to the authorised officer under section 21 of the General Clauses Act only during its operation of 12 days from the date of execution of the detention order or approval by the State whichever is later. In paragraph 7 of the judgment, the Apex Court held as under:-

"The general power of revocation was conferred only on the State Govt. that too in writing for reasons to be recorded in that behalf. By necessary implication flowing from S.3(3) and concomitant result is that the authorised officer has no express power under S. 21 of the General Clauses Act to revoke or rescind or modify the order after the State Govt. approved of it under sub-sec. (3) of S. 3 read with S.3(1). The State Govt. alone, thereafter has power to revoke or rescind the order of detention either on representation under Art. 22 (5) or under S.15 of PASA. The representation should be disposed of accordingly. The reason is obvious that once the order of detention was approved by

> the State Govt. within the aforestated 12 days period or confirmed by the Advisory Board within the period of seven weeks the exercise of power by the authorised officer would run counter to or in conflict thereof. The State Govt. has been expressly conferred with powers under S.15 to revoke, rescind or modify the order of detention at any time during one year from the date of making the order of detention. Therefore, the right of representation guaranteed under Art. 22 (5) would, thereafter, i.e. approval under S. 3(3) be available to the detenu for consideration by the State Govt."

9. On behalf of the State, there is no dispute that after the approval, the detaining authority has taken a decision.

10. Mr. Thakkar further pointed out that in the instant cases, the representations were forwarded to the Central Government. He drew my attention to the affidavit of Under Secretary dated 20th June 2000. In paragraph 3 of the affidavit, it is stated that the representation dated 6.4.2000 was received. However, the date is not specifically mentioned. It is stated that representation dated 6.4.2000 was received in the concerned section on 27.4.2000. At page 104 of the compilation, along with an affidavit dated 13.6.2000 filed on behalf of the petitioners, a xerox copy of EMS Speed Post Receipt No. 2580 issued by the postal authorities bearing date 6.4.2000 addressed to the Hon'ble Minister, Civil Supplies Deptt., Shastri Bhavan, New Delhi 110 001 by Maulik P Vyas, is produced by the petitioners. From the endorsement thereon, it appears that the same was received by the addressee on 7.4.2000. Deputy Manager, Speed Post Business Office, Ahmedabad 380 009 had, in a letter dated 3.6.2000 addressed to the learned Advocate for the petitioners indicated that the aforesaid letter was delivered to the addressee on 7.4.2000. The contents of the affidavit has not been specifically denied by the Union of India.

10.1 So far as Special Civil Applications No. 2956/2000 and 2957/2000 are concerned, there was a common representation made by the learned Advocate on behalf of the petitioners (James Edward Reuben - SCA No. 2956/2000, and Himeshbhai H. Vyas - SCA No. 2957/2000).

10.2 So far as Special Civil Application No. 2955/2000 is concerned the detenu forwarded common representation with regard to the subject matter of this

petition and Special Civil Application No. 2958/00. In Spl. C.A. No. 2955/00 the representation is at pg. No.29 and in Spl. C.A. No. 2958/00 (which is disposed of by a separate judgment), the representation is at page No. 36. Petitioner in Spl. Civil Applications No. 2955/2000 and 2958/2000 is the same and against him two different detention orders were passed, however, common representation was forwarded.

10.3 It was further submitted that in the instant case, the detenu was, no doubt, informed by the detaining authority to forward the representations to the Jailor in case the representation is to be forwarded to District Magistrate, Panchmahals, Godhra, Additional Chief Secretary, Civil Supplies Department, and Economic Advisor, New Delhi. In the instant common representation has been forwarded in Spl. C.A. No. 2956/2000 and Spl. C.A. No. 2957/2000 through learned advocate. So far as the petitioner of Spl. C.A. No. 2955/2000 is concerned, his son has forwarded the representation under his own signature.

10.4 Mr. Thakkar submitted that in the matter of detention, the Court must look at the substance of the matter and not act on mere technicalities. Relying on the decision of the Apex Court in the case of KAMLESHKUMAR ISHWARDAS PATEL vs. UNION OF INDIA reported in (1995(4) SCC 51, it was submitted that so far as the representation is concerned, the Court must look at the substance of the matter. He further submitted that in the case of BALCHAND CHORASIA v/s UNION OF INDIA reported in AIR 1978 SC 297, the representation was made by the counsel of the detenu. It was pointed out that:-

> "the counsel had no personal matter and he was only advocating the cause of his client. In matters where the liberty of the subject is concerned and a highly cherished right is involved, the representations made by the detenu should be construed liberally and not technically so as to frustrate or defeat the concept of liberty which is engrained in Art. 21 of the Constitution."

In that case, the representation was not considered at all.

10.5 Mr. Thakkar further submitted that in the case of K.D. SHAIKH vs. DISTRICT MAGISTRATE reported in 37(3) GLR 314, before the Apex Court the representation was made by the wife of the detenu. He drew the

attention of the Court to paragraph 6 of the judgment to point out this aspect. The Court considered the delay. He further submitted that in the instant case, it is not the case of the Union of India that the representation is not a representation made by the detenu merely because the representation is forwarded by his son. If the representation would have been rejected on the ground that the son has made the representation and not the detenu, the question would have been there before the Court to examine but having not raised such a question, the Court may not examine the matter with all technicalities, but the Court must examine the substance of the matter, that is to say, the representation was forwarded and was considered within a reasonable period or not. No doubt, on behalf of the respondent no arguments are made in this behalf and no question has been raised by the learned advocates appearing for the State or the Union of India, and, therefore, it would not be necessary to examine the question whether the representation should be by the detenu himself or his authorised legal representative, viz. Advocate who has been authorised to forward the representation or anyone else. It will have to be decided only if the question is raised.

10.5 Mr. Thakkar further submitted that in the instant case, the petitioner can send representation to all the three authorities, but it is for the authority concerned to decide the same.

10.6 In the affidavit dated 20.6.2000 of the Under Secretary, it is further stated that the said representation was diarised in the Office of the Minister (CA&PD) on 19.4.2000. It is further stated that 21st, 22nd and 23rd April 2000 were closed holidays. The said representation was received in Secretary (CA)'s office on 24.4.2000, office of the Additional Secretary on 25/4/2000, Director (ECR&E) on 26.4.2000 and Under Secretary on 27.4.2000. A decision on the representation was taken on 27.4.2000. Thus, reading the affidavit filed by the Under Secretary, it is clear that the representation dated 6.4.2000 was decided on 27.4.2000. The Under Secretary has not explained as to what happened to the representation from 7.4.2000, the date on which it was received by the addressee, to 19.4.2000. Thus, there is unexplained delay in deciding the representation.

11. The Apex Court in the case of RAJAMMAL vs. STATE OF TAMIL NADU reported in AIR 1999 SC 684 in paragraph 9

held as under:

"The position, therefore, now is that if delay was caused on account of any indifference or lapse in considering the representation such delay will adversely affect further detention of the prisoner. In other words, it is for the authority concerned to explain the delay, if any, in disposing the representation. It is not enough to say that the delay was very short. Even longer delay can as well be explained. So the test is not the duration or range of delay, but how it is explained by the authority concerned."

12. In the aforesaid case, there was an explanation to the effect that the Honourable Minister was absent and the Apex Court held that the said explanation is not a justifiable explanation. . In the instant cases, there is no explanation at all. Therefore, the delay is fatal.

13. On behalf of the Union of India, learned counsel Mr. Akshay Mehta pointed out the facts and tried to submit that the Under Secretary has filed an affidavit and has given a chain of dates about receipt of the representation and the events thereafter, and, therefore, it cannot be said that the representation was not decided within a reasonable period. No doubt if the representation was forwarded on 18th , and was received on 19th, then possibly the petitioners could not have urged before the Court that there is delay in disposing of the representation. In the instant case, it is pointed out that the representation was forwarded on 6.4.2000 and the same was received by the addressee on 7.4.2000. There is, therefore, no explanation for the period from 7.4.2000 to 19.4.2000. This must be held to be fatal.

14. Under the circumstances, the unexplained delay must be held to be fatal and the continued detention must be held to be bad. The petitioners are ordered to be released forthwith, if they are not required in any other case. Rule made absolute accordingly, with no order as to costs.

15. During this session hearing matters of a similar nature, it has been brought to my notice that on behalf of the Union of India, the representations are not decided in time, and, therefore, the detnues are required to be released. We do not know why the delay is caused. Later on, representations are considered and are

rejected. But, orders are required to be passed by the Courts in accordance with well established principles laid down by the Apex Court that the representation must be decided as expeditiously as possible. There may be delay but there must be explanation - and reasonable explanation. In the instant cases, no explanations are placed on the record. One R.C. Dhankar, Under Secretary in the Department of Consumer Affairs, Ministry of Food & Consumer Affairs, New Delhi has filed affidavit dated 28th April 2000 wherein it has been stated as under:

"Another representation dated 6.4.2000 made in favour of the detenu was received in the concerned section on 27.4.2000. After considering the representations and other relevant records the same was rejected by the Competent Authority of the Central Govt. on 27.4.2000."

15.1 In this affidavit, the deponent has nowhere stated when the representation was received. However, in the further affidavit dated 20.6.2000, as stated by me in paragraph 10.6 above, certain clarification is given wherefrom it is clear that the representation dated 6.4.2000 was decided on 27.4.2000. Under the circumstances, action must be taken against the erring officer/s.

15.2 It is, therefore, directed that the respondent No.4 shall hold an inquiry and shall take appropriate action in accordance with law against the erring officer/s who received the representation but for one or the other reason, got it delayed in deciding the same. Office is directed to forward to the respondent No.4 a xerox copy of the affidavit in rejoinder dated 13th June 2000 filed by Deepakbhai S Vyas brother of Prakash S Vyas along with xerox copy of EMS Speed Post Receipt No. 2580 dated 6.4.2000 and letter dated 30/6/2000 issued by the Dy. Manager, Speed Post Business Office,Ahmedabad 380 009.

sd/-
(B.C. PATEL, J.)
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